Are national banks worse off under H.R. 10 than under current law?

No. The national bank charter is widely recognized as the pre-eminent bank charter because it allows interstate branching under uniform corporate and operational rules, with uniform powers, and subject to uniform regulation and examination.

* National banks have grown to control more than a majority of bank assets and continue to grow as a percentage of all bank assets. Last year, the share of bank assets controlled by national banks rose by 2.5 percentage points.

H.R. 10 *does not reduce* the current powers of national banks to conduct banking activities or harm the national bank charter in any way.

H.R. 10 *improves* the national bank charter and imposes additional limits on the state bank charter. Under H.R. 10, the powers of national banks are expanded to include--

* conducting any financial activity as agent through an operating subsidiary, including selling any type of insurance at any location (including in cities with a population over 5,000). H.R. 10 includes significant provisions that override state anti-affiliation laws. State banks, on the other hand, are only permitted to engage in insurance sales and other financial agency activities if permitted under state law, and then must conduct the activity subject to state law.

* underwriting any type of municipal security directly or through a subsidiary.

At the same time, H.R. 10 removes the current advantage that state banks have over national banks in the securities area. H.R. 10 *prohibits state banks* from engaging in underwriting or dealing in securities, either directly or through an operating subsidiary, if a national bank is not permitted to underwrite and deal in the security.

* FDICIA imposed limits on the powers of state banks where those powers exceed the powers of national banks. For example, FDICIA prohibits state banks from engaging directly or through operating

subsidiaries in noncredit-related insurance underwriting activities (three banks are grandfathered), and prohibits state banks from investing in the equity securities of nonfinancial companies (with a divestiture period for certain banks and a limited grandfather). Under FDICIA, the FDIC may prevent any state bank from conducting any activity as principal that is not permissible for a national bank if the FDIC believes that the activity poses a risk to the deposit insurance funds.

* It is true that FDICIA permits state banks (if authorized under relevant state law) to engage in real estate investment activities so long as the FDIC does not--on a case by case basis--prohibit the activity. But the Treasury proposal--like H.R. 10--would not change this provision. Moreover, the Treasury proposal--like H.R. 10--flatly prohibited operating subsidiaries of national banks from engaging in real estate investment and development activities.

Is the CRA Worse Off Under H.R. 10?

H.R. 10 would not reduce or diminish the CRA; in fact, it strengthens the CRA.

* The CRA applies only to banks and encourages banks to ensure that their lending activities extend to all parts of their communities. Accordingly, a bank's CRA obligations and performance record are based on the bank's lending activities.

* The CRA does not apply to securities underwriting, insurance, or the other non-lending activities authorized by H.R. 10 for holding company affiliates. Accordingly, authorizing a bank to own an operating subsidiary engaged in securities, insurance or other non-lending activities would not increase the bank's obligations under the CRA.

* H.R. 10 does not require banks to cease engaging in any of their current activities and does not prohibit banks from engaging, directly or through a subsidiary, in any lending activity in the future. Thus, H.R. 10 would not force banks to transfer any activities that determine or relate to the bank's CRA obligations out of the bank or reduce the ability of banks to engage in CRA-related activities in the future.

* In addition, H.R. 10 would not provide banks with any financial or regulatory incentive to transfer their lending activities to a subsidiary of a bank holding company. Indeed, since the late 1980s, the overwhelming trend has been to transfer mortgage lending, consumer finance and other lending assets and activities from the holding company to subsidiaries of banks. This has been done to secure the favorable funding available from the bank.

* However, even this current trend of transferring assets from the holding company to operating subsidiaries does not automatically enhance CRA because the regulations of the federal banking agencies uniformly provide that activities conducted in a subsidiary of a bank or in a subsidiary of a holding company are treated the same and are included for CRA purposes *only at the option of the bank*.

* The CRA is not now and never has been tied to the consolidated asset size of a bank.

 * Some contend that a bank's capacity to make loans would be increased if an operating subsidiary engaged in non-lending activities is profitable and dividends those profits to the parent bank. However, by the same logic, if an operating subsidiary is not profitable (such as, for example, due to losses from underwriting property and casualty insurance or speculative securities investments), then the parent bank's ability to make loans would be decreased, resulting in damage to the local community.

 * Furthermore, a holding company can use the profits earned by a subsidiary of the holding company to increase the capital of a subsidiary bank without subjecting the bank to the risks associated with unprofitable or unsafe activities or reducing the bank's lending capacity when the affiliate experiences losses.

 * Moreover, banks today have, and would continue to have under H.R. 10, the ability to request CRA credit for lending activities conducted by either a subsidiary of the bank or a subsidiary of the holding company.

* H.R. 10 strengthens the CRA by permitting a financial holding company to benefit from the expanded powers and affiliations authorized by the bill only if--

 * all the subsidiary depository institutions of the holding company have a satisfactory or better CRA rating; and

 * all the insured depository institution subsidiaries of the holding company that offer consumer transaction accounts also offer low-cost basic banking accounts.

* In addition, H.R. 10 for the first time would allow insurance companies, securities firms and other financial service providers to establish or acquire a full-service bank. By increasing the number of companies that can establish an insured bank, the bill likely will increase the number of insured banks that are in existence and subject to the CRA.